

LOWER PAXTON TOWNSHIP ZONING HEARING BOARD

Meeting of June 28, 2012

Members Present

Richard Freeburn
Jeffrey Staub
Sara Jane Cate
Gregory Sirb
David Dowling
Jeffrey Staub

Also in Attendance

James Turner
Dianne Moran

Special Exception 12-03

Applicant: Chris Danilshenko, d/b/a Club 22

Address: 4620 North Road
Harrisburg, PA 17109

Property: Gary Dobrinoff
3819 Lamp Post Lane
Camp Hill, PA 17011

Interpretation: Article 306.B.2; Allowed uses in primarily Business zoning districts. A special exception is required to operate a BYOB Club in the Commercial General zoning district. The applicant seeks approval to operate a BYOB Club at 3920 Jonestown Road.

Grounds: Article 306.B.2 of the Lower Paxton Township Zoning Ordinance pertains to this application.

Fees Paid:

Property Posted: June 19, 2012

Advertisement: Appeared in The Paxton Herald on June 13 & 20, 2012.

The hearing began at 7:47 p.m.

Mr. Freeburn swore in the following: Chris Danilshenko, applicant and Attorney Joseph Caraciolo. It was noted that Ms. Moran was under oath from the previous testimony.

Mr. Freeburn noted that it was customary to enter the application and site plans as Township exhibits, and questioned the applicant if he had any objections. Mr. Caraciolo answered that he did not.

Ms. Dianne Moran, Planning and Zoning Officer for Lower Paxton Township, advised that the appropriate fees were paid. The proper advertisements appeared in The Paxton Herald on June 13th and June 20th, 2012. The hearing notices were posed on June 19, 2012.

Ms. Moran advised that Article 306.B.2; Allowed uses in primarily Business zoning districts. A special exception is required to operate a Bring Your Own Bottle (BYOB) Club in the Commercial General zoning district. The applicant seeks approval to operate a BYOB Club at 3920 Jonestown Road.

Mr. Freeburn requested Ms. Moran to explain what is required of the applicant in order to obtain a special exception. Mr. Moran answered that they must apply and meet the requirements of the Ordinance as well as receive a permit from the Police Department. She explained that she spoke with David Johnson, the Public Safety Director and was told that he had no objections or comments or issues with this. She further noted that the Lower Paxton Township Planning Commission recommended approval without comments.

Ms. Moran explained that the special exception falls under Section 116. Mr. Freeburn suggested that the applicant's counsel could address the items that are required.

Mr. Sirb questioned if this club had a liquor license. Mr. Caraciolo answered that it does not have a liquor license. Mr. Sirb questioned if it ever had a liquor license. Mr. Caraciolo answered that he did not believe that it had one, certainly not to the lessee's knowledge.

Mr. Sirb questioned to acquire a liquor license, would the business need to come before the Zoning Hearing Board. Ms. Moran answered no. Mr. Sirb noted because this is a BYOB, it must come before the Zoning Hearing Board. Ms. Moran answered that it correct.

Mr. Sirb questioned if this property ever had a liquor license. Mr. Danilshenko answered that at one time it was a cocktail lounge and had a liquor license.

Mr. Sirb questioned how alcohol is served at this time. Mr. Caraciolo noted that no alcohol is served at this time. Mr. Freeburn noted if it becomes a BYOB, no alcohol will be served as it would be brought in by customers and poured by staff, but not served in the sense of selling the alcohol. Mr. Caraciolo answered that is correct, and he would like to review the process for how alcohol would go from the person who brings it into the club into their hands and the assurances that he has made that they will not be serving intoxicated customers as well as assurances that no one under the age of 21 will be served alcohol. He noted that those items are not necessary for the special exception; however, he felt that these items would be important to the Zoning Hearing Board.

Mr. Caraciolo explained that he prepared some exhibits to present. He noted that he prepared one single exhibit that is 26 pages with information that addresses each of the elements but is also relevant for how the club would operate once the BYOB is allowed. He noted that there are only five requirements and they come from Chapter 63 of the Township Ordinance. He noted that the applicant must; (1) obtain general liability coverage in the amount of \$1 million which he has and will present today; (2) get a valid certificate of occupancy, which he has; (3) the fire inspection needs to be up to date which it is; (4) obtain a permit from the Police Department. He noted that Mr. Danilshenko went directly to the Police Department first not realizing that he needed to get a special exception from the Zoning Hearing Board first. He noted that the application has been completed but getting the Special Exception is the first step. He explained, once the Special Exception is approved, then he would apply for the permit from the Police Department. He noted that finally, (5) the hours of the business need to be posted which he will continue to do.

Mr. Sirb questioned Mr. Caraciolo what the hours would be. Mr. Caraciolo answered that the club is basically open all night, but because of how the BYOB ordinance is written; the club will have to close at 2 a.m. just like any bar. He noted that it would reduce the club hours by six hours a night. He explained that the Planning Commission felt with the club closing at 2 a.m., there was no possibility of noise or people wandering around after that time. He suggested that the neighbors would appreciate it. He noted that the Planning Commission appreciated that.

Mr. Freeburn questioned if the Liquor Control Board (LCB) has any oversight with the BYOB. Mr. Caraciolo answered that they have oversight, but the initial determination needs to be made at the Township level. He noted that the LCB oversight would be to determine if there are any violations occurring; the same for any club open at anytime. Mr. Freeburn questioned if the LCB had any authority for what is occurring now with the club. Mr. Caraciolo answered that they would have authority if there was a complaint that alcohol was being served at a club, the LCB would inspect the premises to make a determination if alcohol was being served. He noted that it would be exactly the same with a BYOB Club except the standard wouldn't be any alcohol; the standard would be the purchase of alcohol. He noted that the same oversight would apply, just a different standard.

Mr. Freeburn noted that since Mr. Caraciolo identity the items on the list for a Special Exception, and indicated that the applicant intends to comply with all of those items, is there anything else that is necessary in order for the Zoning Hearing Board to consider granting the special exception. Mr. Moran noted except for the list.

Mr. Turner noted that Mr. Caraciolo requirements dealt with the State regulations for a BYOB club with the Township requirements set forth in Section 116.c for what factors the Board should consider in ruling on an application for a special Exception.

Mr. Caraciolo noted that the first factor of Section 116.c is meeting the requirements of Chapter 63. He noted that compliance with other laws is the second requirement and it is clear that Chapter 63 does and must comply with other laws for the special exception. He noted that Chapter 63 starts with suggesting that the purpose of the article is to regulate the hours of BYOB clubs. He noted that the third issue is the traffic issue. He noted that presently there are 22

parking spaces at the club with club occupancy being 99. He noted with a BYOB, he is proposing to contract valet parking which would extend the parking spaces up to 110 which would be more vehicles than people who are allowed in the club. He noted that Mr. Danilshenko has already secured contracts with other local businesses to utilize their parking lot after hours. He noted that he has set up a valet system where the first two spaces in the club would actually be designated for valet service. He noted that an employee would move the vehicle to another parking space and bring it back when the person is ready to leave.

Mr. Sirb questioned what if a patrol does not want to use valet parking, would they be forced to use the valet parking. Mr. Caraciolo answered at this time we would not force them to use it, but if it was a concern of the Zoning Hearing Board, he could force them to do that. Mr. Sirb noted that any BYOB club, at least in the beginning, are hot items, and the business will be increased, but the area and street intersection is very crazy and busy, and the last thing that he would want to see is cars going in and out constantly with the valet parking from 12 midnight to 2 a.m. which is the prime time for DUI accidents and arrests. He noted he wants to know where the valet parking service will be located, with a contract signed by the property owner. Mr. Caraciolo noted that he would have Mr. Danilshenko answer that question.

Mr. Danilshenko explained that he has secured a parking area directly across from the Dairy Queen for the valet parking. He noted that the agreement is waiting to be signed pending the BYOB approval. He noted that he does not want to rent space if he does not get the approval for the BYOB. He suggested that the address is 5801 Jonestown Road. He noted that two drivers would be driving back and forth to that location. He noted if people do not want to use valet parking and no parking is available, they will not come to the establishment. He suggested that the valet parking will help his business.

Mr. Sirb questioned how many parking spaces are available at 5801 Jonestown Road. Mr. Danilshenko answered that 70 parking spaces are available.

Mr. Turner noted for the sake of the record, he did not think it could possibly be 5801 Jonestown Road. He suggested that it might be 3801 Jonestown Road.

Mr. Danilshenko noted that he has spoken to the owner of the Dairy Queen and they don't mind their lot being used after hours. He noted that the owner next to the building in Susquehanna Township allows parking on his lot at this time in his strip mall after hours as a result of his taking down a sign that once blocked his property. He noted that he secured 20 parking spaces at 5403 Jonestown Road. He noted that he secured 18 parking spaces at 5401 Jonestown Road, a lamp shop that went out of business. Mr. Sirb questioned if Mr. Danilshenko has a secured contract or a contract pending approval of this plan. Mr. Danilshenko answered yes.

Mr. Freeburn questioned if Mr. Danilshenko has any documentation for these agreements. Mr. Caraciolo noted just the testimony at this time.

Mr. Staub noted that 5401 Jonestown Road is quite a distance from his business. He suggested that it is located near where the Fishbone business is, where the road splits at

Jonestown Road and Allentown Boulevard. Mr. Caraciolo noted that this is not a location for a customer to park their car and walk to the business. He noted that it is only for valet service and the drivers would drive to the facility and then drive back. He noted that the club would secure the drivers and they would all be licensed drivers.

Mr. Freeburn questioned what the parking lot that would provide 70 parking spaces would be charging Mr. Danilshenko to use the property. Mr. Danilshenko answered that it would be \$1,500 per month. Mr. Freeburn questioned for what period of time would that be. Mr. Danilshenko answered that it would be for ten years. Mr. Freeburn questioned what the name of the person is that would be signing the agreement. Mr. Danilshenko noted that it was in his email and will be handled by REMAX realtors

Mr. Sirb noted that it could be a condition of the variance that Mr. Danilshenko must supply a signed copy of the agreement to the Township. Mr. Turner agreed that it could be required for him to secure the agreement to the Township Zoning Officer prior to the issuance of a permit. Mr. Caraciolo noted if the Board approves the SE, he then needs to receive the permit from the Police Department, and then he would be able to supply a copy of the contract. He questioned if that would be the appropriate way to handle this. Mr. Turner answered that it would be a condition prior to opening for business. Mr. Caraciolo noted that it would allow him to continue with the process.

Mr. Caraciolo noted that the next issue is that the business should not substantially change the character of any surrounding residential neighborhood. He noted that he is not suggesting making any major changes; rather he believes that the neighborhood would benefit from it due to the different hours of operation.

Mr. Sirb questioned what the current hours of operation are. Mr. Danilshenko answered that he opens at 11 a.m. and closing at 5 a.m. Mr. Sirb questioned what the 5 a.m. time would change to. Mr. Danilshenko answered that he would open at 8 a.m. and close at 2 a.m. He noted that all patrons must be off the property by 2:30 a.m. Mr. Caraciolo noted that this was discussed with the Planning Commission that Chapter 63 states that a BYOB could only be run from 2 a.m. to 8 a.m. He noted that he found an older version of Chapter 63 which says that it cannot be run from 2 a.m. to 8 a.m. He noted that it would be his client's intention to close the club at 2 a.m. and open it at 11 a.m. He noted that the Planning Commission believes that the change should be made and Ms. Moran agrees that Chapter 63 should be read to exclude 2 a.m. He noted that the club hours by Chapter 63 would be no earlier than 8 a.m. and no later than 2 a.m. Mr. Freeburn questioned if that would be the applicant's proposal not to open before 11 a.m. Mr. Caraciolo noted that he could open at 8 a.m., but not likely until 11 a.m.

Mr. Freeburn questioned if a business is currently operating at the site. Mr. Caraciolo answered yes. Mr. Freeburn questioned if there are live bands or groups playing now. Mr. Danilshenko answered not at this time. Mr. Freeburn questioned the plan is for controlling the noise level coming from the premises. He noted that he does not know what the noise level is now, but he has a concern for what the plan is and how would that affect the neighborhood. Mr. Danilshenko answered, in reference to the noise, at this time music cannot be heard from the outside of the facility so it would be a benefit to close at 2 a.m. in regards to people being out in

the parking lot and controlling how people will drink coming into the facility. He noted that he would not allow people to sit outside in their cars and drink. He noted that the valet service would be present providing security so they would monitor the parking lot. Mr. Caraciolo noted that Mr. Danilshenko has mentioned that people will come to the club with alcohol and drink in the parking lot and then enter the club. He noted that it would not be permitted, but every once in a while they currently catch people doing that. He noted by having the valet outside and the rules for BYOB it would eliminate that from happening since they would be permitted to bring the alcohol into the premises. He noted that the noise would go inside the club which is soundproof. He noted that the noise level would stop at 2 a.m. as opposed to what goes on now until well past 5 a.m.

Mr. Freeburn noted that the client has stated that it is soundproofed, but how do you propose to keep the noise inside the club. Mr. Caraciolo answered that the club already has the soundproofing features and no additional features will be added for soundproofing. He noted that there will be no structural changes other than the addition of the refrigeration units which are included in the packet of information.

Mr. Sirb questioned if the refrigeration units are to be used to keep the patrons alcohol cold while they are there. Mr. Caraciolo answered yes. He explained that the alcohol club rules would be posted which would assure that people are not receiving drinks that do not belong to them, or when they are intoxicated or under 21 years of age. He noted that anyone under the age of 21 would be required to wear a special t-shirt. He noted that everyone gets a wristband which would be checked by a person serving the alcohol. He noted that the owner has secured two breathalyzer machines and if someone is visibly intoxicated, they can blow into a unit to determine if they are above the legal limit for driving. He noted that they are the BAC Track 70. Mr. Sirb noted that you cannot force anyone to blow into a breathalyzer machine. Mr. Caraciolo noted that he is aware of that but they can be told that they are no longer welcome to stay if they chose not to or they will not be permitted to have alcohol on the premises. Mr. Sirb questioned if a patrol refuses the breathalyzer test and the club refuse to serve them would they be allowed to claim the rest of their alcohol. Mr. Caraciolo noted that the club rules state that any alcohol that is turned in could be the property of the club in the event there is any breach of club rules.

Mr. Sirb questioned if one of the club rules would include if a patrol was inebriated. Mr. Caraciolo answered that was correct. Mr. Sirb questioned if that would be at the club's discretion. Mr. Caraciolo answered that it is more than discretion as the employees would participate in the Pennsylvania Responsible Alcohol Management Program (R.A.M.P.) Training provided by the Pennsylvania LCB. He noted that it teaches the managers to watch if someone is getting to the point of having too much to drink, and at that point you cut them off. He noted that it is similar to what a bartender would do. He noted that his employees and management will be forced to take these courses and he would like them to do this in July. Mr. Caraciolo noted that these are the same courses that are recommended by the LCB. Mr. Sirb noted that it also cuts down on the insurance costs.

Mr. Freeburn questioned if there will be additional music and noise, his concern is noise. Mr. Caraciolo answered that there will be no additional music; the music already played in the club will not change. He suggested that there will be less noise because people currently drink in

the parking lot and that would stop. He noted that the club is fairly soundproof but he would not subtract or add from that soundproof.

Mr. Freeburn questioned if security would be provided for the parking lot. Mr. Caraciolo answered that it would be part of the valet's responsibility noting that they have a very sophisticated security system that was initially designed to determine if someone was under the age of 21. He noted that all licenses would be scanned and there are cameras throughout the club that all go to a central observation room. He noted that they have both inside and outside cameras to verify that no one is violating any of the rules and that nothing illegal is going on.

Mr. Freeburn questioned, other than the valet employees who may not be present since they are parking or retrieving vehicles, do you propose to have any parking lot security that would be in the parking lot 100% of the time, to ensure that there is no patron loitering or congregating in the parking lot. He noted that his concern is for the neighbors and he would not want people congregating or loitering or hanging around in cars, noting if this would occur they would have to leave. Mr. Danilshenko answered with the valet parking, an employee would stand at the front door and swipe the cards to determine if the people are allowed to be in the premises. He noted that it is a system that the LCB highly recommends and one that he has used at other facilities that he runs in Connecticut, New York, and South Carolina. He noted that checks are done on the parking lot every 15 to 30 minutes and they log it on a sheet. He noted that they must log the perimeter walk as well and he rotates that work between employees so his security people keep their minds fresh. He noted that the person at the front door will switch off with another security guy, do a perimeter walk, sign the sheet and go back to another location in the back. He noted that the floor manager maintains the sheet and the general manager is on top of everything. He noted that it runs like a machine and is very organized.

Mr. Sirb questioned if they ever considered having a uniform presence. Mr. Caraciolo answered that security wears a headset and they do have a particular uniform. Mr. Serb noted that he is talking about a dedicated police officer, at least, one off-duty officer. Mr. Danilshenko explained that certain Township's frown upon their officers moonlighting. Mr. Serb noted that he does not. Mr. Danilshenko stated if the Township does not have a problem with that it would be fantastic. He noted that it would help to identify some of the problem people that they are aware of in the Township. He noted those are not the type of customers that he wants in his facility, as they are there to do harm and damage and he does not want them there.

Mr. Freeburn noted that Mr. Danilshenko stated that his current security system would have sign in sheets, however, he questioned if he had that system now. Mr. Danilshenko answered yes that he currently does check-ins. Mr. Freeburn questioned if he had the documents that shows the sign-ins. Mr. Danilshenko answered that since he is normally on site and there is no alcohol served at this time, his staff checks in with him, he does not have them sign in as he is at the desk. He explained that he sends his staff out for a parking lot sweep or if an employee needs to get a smoke, then he will send him out. He noted it is not appropriate at this time with the amount of business that he has; he doesn't need a team of six people at this time. He explained that he has cameras posted around the building that he can monitor.

Mr. Freeburn questioned if Mr. Danilshenko currently has a sign in system for the security personal for their surveillance around the building. Mr. Caraciolo answered that it is proposed to be added to the BYOD business.

Mr. Freeburn noted if the Township Zoning Officer came around and asked to see the sheets; could that be made as a condition of the application. Mr. Caraciolo answered that his client would make that available to any Township Official.

Mr. Freeburn noted that he did not know about the use of off-duty police officers as an option. He agreed with Mr. Sirb that there is the need for the presence of a person who is in a uniform that people would recognize as person who had some form of authority, meaning a policing authority, and not simply using the t-shirt uniform with the business name on it, having a young kid with long hair and piercings and so forth. He noted that he needs to hire someone who has some authority.

Mr. Sirb questioned Ms. Moran if the Police Chief had any issues with this business. Ms. Moran answered that she spoke with Public Safety Director David Johnson and asked him if he had any issues, conditions, or concerns to be placed on this application and he stated that he did not.

Mr. Freeburn noted if the Zoning Hearing Board places conditions on the application and the Township determine that the business is not in compliance, then the Township would have to take enforcement action. Mr. Turner noted that it would revoke the permit. Mr. Caraciolo noted that he understands that and with regards to having a police officer on the property, he has not looked into it and he does not know if it would be possible. He noted if the Township checks the sign-in sheets, even on a daily basis, he would welcome that. He explained that he hopes to have an established track record so the inspections won't be needed as much.

Mr. Freeburn noted even if it is not an off-duty police officer but a licensed security guard, that would be something better than what was described earlier in terms of level of respect that folks might thwart that person. Mr. Caraciolo noted that the security guards that are present are very noticeable and they are trained. He noted that they are noticeable mainly due to their stature.

Mr. Dowling suggested that he is saying that they would be much more of a deterrent than a rent-a-copy would be.

Mr. Sirb noted that he is still set on a uniformed police officer, noting that it doesn't have to be from Lower Paxton Township. Mr. Dowling noted that he did not think you could have a police officer in uniform if he was not on duty. He noted that if he is moon-lighting off duty he did not think he could wear his uniform. Mr. Caraciolo agreed and he stated that he did not think that an off-duty police officer could work in his uniform. Mr. Sirb suggested that he would have to get approval from his police commissioner.

Mr. Freeburn noted that the sign-in sheets are not as important as what will it will be for the neighbors if there is a condition now.... Let me ask you a question in regards to

outside lighting; what is the lighting like on the outside. Mr. Danilshenko answered that it is very dim. Mr. Freeburn questioned if any additional lighting is planned in connection with this operation. Mr. Danilshenko answered that it would be low level light, spot lights, motion detectors for the back rear of the building, noting if there is any movement the lights would come on. He noted that he could have the lights on 24 hours a day but he does not want to disturb the neighbors who live directly behind the property; therefore, he suggested that a motion detector system would be good.

Mr. Freeburn noted that lighting for the purposes of security would be important but his biggest concern would be to make it better and not worse for the neighbors. Mr. Caraciolo noted that the current lighting would tend not to interfere with the neighbors, but if it was increased or more motion detectors were added, it would annoy the neighbors. He noted that a flashlight would be less annoying to the neighbors than a light that goes on every two hours throughout the night for operations. He noted that the natural features lists that the proposed use should be suitable for the site considering the disturbance of steep slopes, mature woodlands, wetlands, flood plains, and natural features. He noted that he is not proposing any changes to the natural features.

Ms. Cate questioned if there would be any changes to the interior since it would not be a bar but a BYOB. Mr. Caraciolo answered that there would be no changes per se noting the last two pages of the packet detail what the interior looks like now. He noted that the only change which is shown in the last pages would be the addition of the cooler, the refrigeration and on top of that would be the service area. He noted that it is such a small area and designed that way to have some control so that people don't have access to their own alcohol which would prevent the employees from knowing if they were intoxicated.

Mr. Freeburn questioned if there would be a place for the patrons to store their liquor. Mr. Caraciolo noted that is what the refrigeration units are for. He noted all liquor coming into the club must be checked in. He noted that the club rules are found on the first page of his packet. He noted when the alcohol is checked in the patron will receive a wrist band and a card which would show how much and what they had. He noted when they want to retrieve a bottle, they would present their information at the bar area and they will then get the alcohol. He noted that it would limit how much they would be served at a time to prevent the patrons from walking around with large bottles. He encouraged the Zoning Hearing Board members to review the alcohol club rules found on the first page.

Mr. Danilshenko noted that page two shows the entrance flow of the club for the patrons. He noted that once the patron provide their ID, and are given a wrist band, the alcohol is brought to a service area and registered with their table number. He noted that anyone who is under age is given a wrist band and a t-shirt with the number for that group. He noted that one member from that group would register the alcohol and they will not be able to keep their liquor on the table. He explained that they will be served by a staff member that is R.A. M. P. certified. He noted that it eliminates people from having more than two bottles at their table and from drinking too much.

Ms. Cate questioned if they will serve food. Mr. Danilshenko answered no but he hopes to be back at some time to receive permission to do that. Mr. Freeburn questioned if there was any plan to do so. Mr. Danilshenko noted at sometime in the future he would like to serve some type of food. Mr. Freeburn questioned if it would be snacks of sorts. Mr. Danilshenko answered that he would like to provide pretzels, chips or hot dogs, items that could be microwaved.

Mr. Freeburn questioned if anyone in the audience wished to be heard on this application.

Mr. Freeburn swore in: Ms. Nancy Miranda of 3945 Walnut Street and Mr. William Miranda of 3945 Walnut Street. Ms. Miranda explained that she lives behind the establishment to the south. She noted that she lives in a two-story brick house and her grandson lives with her. She noted that his bedroom abuts the direction of the business, and he is autistic. She explained that he is awakened from the noise at 3 a.m., wanting to know what the people are doing out there. She noted that her car was damaged in the past while it was parked on Walnut Street. She noted that the patrons park in the alleyway and on Walnut Street and everywhere. She explained that she had a Jeep Cherokee and someone destroyed the side of her car. She noted that the noise is there with or without the alcohol. She noted that the owners can't control the noise now and questioned how will they control it when they have all this alcohol.

Mr. Freeburn questioned Ms. Miranda where the noise is coming from that she hears. Ms. Miranda answered that it is coming from the parking lot. Mr. Miranda noted that he has lost many a good nights' sleep and when they walk through the alley at 2 or 3 a.m. in the morning, screaming and carrying on, calling names and using bad words. He noted that his grandkid is up in his bedroom. He noted in the morning when he walks his dog he finds whiskey bottles and all kind of stuff from there. He noted that we don't want it.

Mr. Freeburn questioned if the noise is coming from people who are outside of the club. Mr. Miranda noted that they are coming out of the club because the doors are open at the back.

Mr. Sirb questioned if the area could be fenced in to prevent people from accessing the alley. Mr. Danilshenko noted that their home is located behind Adult World's premises. Ms. Miranda noted that Adult World is closed and the noise comes from Mr. Danilshenko business. Mr. Miranda noted that it is 2 or 3 a.m. in the morning.

Mr. Freeburn questioned what time does Adult World close. Mr. Danilshenko noted that it was 4 a.m. He noted that they allow their entertainers to smoke out the back of the building in a fence area. He noted that the girls go back out there 7 to 8 times smoking because they don't allow smoking inside. He noted while they are smoking cigarettes you hear everything.

Mr. Caraciolo noted that the proposal is that the club would close at 2 a.m. Ms. Miranda noted that she would prefer if they moved the club to some other place. Mr. Caraciolo noted that the only thing before this Board is to allow the club to close at 2 a.m. or leave everything the way it is now. He noted, given that option, would you not prefer that they close at 2 a.m. Mr. Miranda noted that it would be the same. Ms. Miranda noted that it would make no difference. Mr. Caraciolo questioned if there was anything that would make the Miranda's feel more comfortable. Ms. Miranda stated I don't think so. She noted that there

would be more drunk people there than are there now and right now there are a lot of drunken people there. They are screaming. Mr. Miranda noted that they will use the parking lot, and be making noise. Ms. Miranda noted that they are throwing bottles. Mr. Caraciolo noted that they are highlighting the exact things they are trying to prevent. He noted that they are describing the fact that people are drinking in the parking lot which is one of the thing his client noticed as well and he is trying to prevent. He noted that people would not be able to throw bottles in the parking lot as the liquor would be inside the club. He noted that they complained about the noise and referenced 3 a.m. but the club would not be open at 3 a.m. it would be closed at 2 a.m. He noted that it is a potential loss of business for his client, but he believes that the benefits outweigh that.

Mr. Sirb questioned if Mr. Danilshenko owns Adult World as well. Mr. Danilshenko answered no.

Mr. Freeburn questioned if the two businesses are connected. Mr. Danilshenko noted during the evening hours, Adult World runs their facility completely different. He noted that their customers will park up in the Gentlemen's Club facility, drink there, walk by his establishment, and go into Adult World since they are a cheaper club. He noted in regards to the alley, he had not heard any comments about that. He noted that his business is in the middle.

Mr. Sirb suggested if Mr. Danilshenko fenced in his property it would not be an issue. Mr. Caraciolo noted that there is a fence now. He noted if they walk over across to the other area there would be a fence.

Mr. Danilshenko questioned if the alley behind the business is a Township alley or a private alley. He noted that there is a dirt road behind Adult World and their customers.... Mr. Miranda answered that it is a Township alley. Mr. Danilshenko noted at one time there were some problems at Adult World and they wanted to block that area off from the trade and a Lower Paxton Township Police Officer made them move their vehicles. He noted that it was ten to fifteen years ago. Mr. Caraciolo noted that his client has the opportunity to maintain the area if they get the variance but if it is denied then things will stay the same. He noted that these things will still continue to occur and he assumes that complaints have been made to the police and they have been incapable of resolving anything. He noted that the changes directly address three of the points that were raised by the people who live behind the establishment, the parking issue will now be resolved with the valet service, the alcohol issue would get it inside the club and it would prevent people from getting intoxicated and the club would close at 2 a.m.

Mr. Caraciolo noted that he understands that the neighbors are not happy with the club but that is not going to change. He noted that Ms. Miranda stated that she wants the club gone, but that is not what is in front of us today. He noted that he is proposing to reduce some of the problems Ms. Miranda described.

Mr. Miranda noted that Adult World was closed for one year and they learned their lesson. He noted that he had no complaint about them. Mrs. Miranda noted that the club 21 was closed also. Mr. Miranda noted that he does not hear any music from the other club and he lives right behind it.

Mr. Freeburn questioned if the music that you hear is coming from... Mr. Miranda stated yes, when the door is open and in the alley they make all kind of noise. Ms. Miranda noted that they are saying bad words and my grandson can hear it.

Mr. Freeburn thanked the Miranda's for their comments and questioned if anyone else in the audience wished to be heard.

Mr. Freeburn questioned if the Township had anything else to add. Ms. Moran answered no.

Mr. Freeburn noted that the Board now has 45 days to render a decision for this application.

Mr. Sirb noted that the Public Safety Director had no issue, but two issues are tied to the approval, that dedicated parking spaces by way of a valid contract for 70 parking spaces be required. He noted that he thinks the entire property should be fenced into control the population noting that it is Mr. Danilshenko's responsibility to do this. He noted that you can't have a BYOB with the establishment next to you which you have no control over. He needs to be able to separate his establishment from that one. He noted that it would be an easy way to control traffic, control how people are leaving the business, cutting down on the noise to the back since there would be no reason to go back there. He noted that they would not be able to get to the alley. Mr. Freeburn noted that he did not think it would be possible to fence in the area. Mr. Caraciolo noted that is correct, he would have to request a variance to do that. Mr. Sirb noted that it would be easy to fence in the back area.

Mr. Dowling questioned if the alley abuts the building. Mr. Caraciolo answered yes. Mr. Dowling questioned where he would put the fence, against the building or on the other side of the alley. Mr. Freeburn noted that his concern is safety in terms of fire safety, ingress/egress and things like that. Mr. Sirb noted that is not a concern as they have a huge ingress where the parking lot is, noting that you could bring in five fire trucks between them and Adult World. He noted that they have to control the back, and if you put a fence up against the property, you have to remove the people from going into the alley, parking in the alley and getting into the alley. He noted that the people using the alley are coming to Club 21 or Adult World. Mr. Caraciolo suggested that people are using the alley since it is more private and it is easier to get away with drinking there. He noted that there would be no reason to do that if the club allowed drinking inside. Mr. Sirb noted that he agreed to a point, but there will still be drinking outside. He suggested that it would decrease since they would be allowed to bring alcohol into the club. He noted that the flow of traffic must stop going to the alley.

Mr. Dowling noted that he would agree with Mr. Sirb conceptually but he does not think it would work with this location, with the way the alleys are, the adjoining businesses, and the way the streets are configured. He noted that he does not see how a fence would work. He noted if the business was out in a field somewhere, it would be very easy to do that.

Mr. Freeburn noted that he is not prepared to consider that since he did not visit the property. He would have to see a site plan and he would have to have someone show what the plan would be.

Mr. Sirb questioned the applicant if he could fence the back of his property so that patrons could not access the building. Mr. Danilshenko answered that it could be done but being a public alley it might be an issue. Mr. Sirb stated, if the Township did not agree to it, then that would be fine, he would let it go. He noted if the Township would say yes, he would not need to see a site plan for that.

Mr. Freeburn noted that he is not that familiar with the property. Mr. Sirb noted that he knows the alley and where these people live. He noted that the only traffic in the alley is from Club 22 and Adult World. He noted that there is not that much traffic in the alley particularly after midnight. He noted between midnight and 2 a.m. it is the clubs traffic. He noted that it would be eliminated if they could not access the club from the alley. Mr. Caraciolo questioned Mr. Sirb if he was suggesting a fence that would block the road. Mr. Sirb answered no, just one that prevents access from the club property to the alley. Mr. Caraciolo noted that there is already a fence between the two properties and people are going around it as it is. He noted that he did not know if a fence would stop them from doing what it is that they are doing and walking around from the club. He noted if you eliminate the need for patrons to go back there, then no one would want to sit back there and drink in their car when they can drink inside the club. He noted that you eliminate the traffic after 2 a.m. by limiting the club hours to 2 a.m.

Mr. Sirb noted that to be a good neighbor in the Township, noting that the club is a one-of-a-kind type of business; he thinks it would be good to put up some type of barrier in the alley, so there would be no reason to walk back there and everything should come out to the street.

Mr. Staub questioned if the Zoning Hearing Board granted this Special Exception and the BYOB would happen, what would happen if the conditions related to the facility worsen for the neighbors. He questioned if there was a process that the BYOB approval could be rescinded. Mr. Freeburn suggested that he would have to meet the conditions discussed earlier such as those for the valet parking lot, the need to have the regular security rounds, and the ability of any Township official to inspect the records and determine if they are in compliance. He noted if they fail to do that and alcohol continues to be used in the parking lot, then the Township could revoke the Special Exception. Mr. Sirb noted that it would not be the Township, noting that he knows BYOB like the back of his hand. He explained if Club 22 becomes a nuisance then they would follow under the nuisance act under the LCB and the LCB would close it down immediately. He noted that happened to a club in downtown Harrisburg after the second shooting that occurred in the club. He suggested that the fence would help with the noise and provide some shielding for that area and remove both the foot and care traffic.

Mr. Freeburn noted that he hears what Mr. Sirb is saying but he can't say what impact it would have. He noted that he has family members who are neighbors but he did not take a look at the property to see if a fence would work.

Ms. Moran noted that regardless of the Special Exception, she questioned if the BYOB permit is issued annually and the Police Department could rescind it within that year. Mr. Caraciolo answered that is correct, but the Special Exception must be granted first. Ms. Moran noted if the Police Department has problems with the BYOB next year, the Police could rescind the license. Mr. Caraciolo answered that is correct. Mr. Freeburn noted that would be another way of enforcing the commitment by the property owner to manage the nuisance of the property. Mr. Caraciolo noted that having the permit from the police is necessary to have a BYOB.

Mr. Dowling made a motion grant the special exception to Club 22 with all the conditions mentioned by the applicant. Mr. Sirb seconded the motion. He noted that he would like the applicant to consider the fence. Mr. Freeburn noted that it would be a step towards providing some controls as it places the Club under the eye of the LCB, and Police Department could revoke the license if they deem necessary. A roll-call vote followed: Mr. Staub, aye; Mr. Dowling, aye; Mr. Sirb, aye; Mrs. Cate, aye; and Mr. Freeburn, aye. Mr. Turner noted that the motion carried.

The hearing ended at 8:53 p.m.

Submitted by:

Maureen Heberle
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON
APPLICATION OF : TOWNSHIP ZONING HEARING BOARD
: DAUPHIN COUNTY, PENNSYLVANIA
:
CHRIS DANILSHENKO d/b/a : DOCKET NO. 12-03
CLUB 22

DECISION GRANTING SPECIAL EXCEPTION

The applicant seeks a special exception to operate a BYOB club in the Commercial General Zoning District. A hearing on the application was held on June 28, 2012.

Facts

1. The applicant and lessee of the property in question is Christopher Danilshenko of 3920 Jonestown Road, Harrisburg, Pennsylvania 17109.
2. The property in question is owned by Gary Dobrinoff of 3819 Lamp Post Lane, Camp Hill, Pennsylvania.
3. The property in question is located on the north side of U.S. Route 22 (Jonestown Road) and consisting of a rectangular parcel improved with an adult nightclub. There are 22 parking spaces on the property, which is fully developed.
4. The applicant proposes to operate a BYOB club on the premises. No structural changes are proposed as to the property. Operating hour would be 8:00 a.m. to 2:00 a.m., consistent with PLCB regulations. Existing hours of operation are 11:00 a.m. to 5:00 a.m.
5. Occupancy of the facility is limited to 99 persons. In order to accommodate anticipated parking demand the applicant has negotiated the lease of up to 70 spaces at 3801 Jonestown Road. A valet parking service will be provided.
6. The applicant has obtained or is in the process of obtaining liability insurance, a certificate of occupancy, a fire inspection and a police permit. The application has been reviewed by the Planning Commission which recommended approval of the request.
7. Notice of the hearing was posted and advertisement made as required by the ordinance.

8. In addition to the applicant, William Miranda of 3945 Walnut Street, a neighboring property owner to the rear of the premises, appeared before the Board. Mr. Miranda testified about concerns of noise and disruptive behavior from the existing facility. The applicant testified that upon approval of the BYOB facility, regular security rounds will be conducted around the building and in the parking lot. No persons will be allowed to drink in the public lot or in vehicles parked in the lot.

Conclusions

1. Article 306.B.2 of the ordinance establishes BYOB clubs as a special exception in the Commercial General Zoning District.

2. Section 111.D.3 of the ordinance grants to the Zoning Hearing Board the power to grant special exceptions where the conditions set forth in Section 116.C are met.

3. The Board finds that the applicant has satisfied the criteria of Section 116. The project is in compliance with other relevant township, state and federal regulations. Further, changing the use from its existing unlicensed adult club status to a BYOB club subjects the property owners to additional regulation which will protect the general public from nuisances. Traffic generated by the proposed use will be no different than the existing use. The applicant has proposed site planning in that he has arranged to accommodate parking demand without generating on street parking in the neighborhood. Otherwise, the property itself is unchanged. The use will not substantially alter the character of the neighborhood which is well established. The existing club represents more of a nuisance than the proposed facility with its higher level of regulation. The hours of operation will generate less disturbance in the neighborhood. Once parking concerns are met, there will be no adverse impact on public safety and the use is suitable for the site.

Decision

In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the special exception requested should be and is hereby

granted allowing the operation of a BYOB club on the property known as 3920 Jonestown Road on the condition that the applicant enter into a written agreement for the lease of not less than 70 parking spaces and provide valet service in connection with those spaces. Evidence of the agreement shall be provided to the zoning officer prior to the issuance of a certificate of occupancy. Upon termination of the lease, the special exception shall terminate unless evidence of replacement parking facilities is presented. In addition the applicant shall erect a privacy fence around the rear of the premises. In all other respects operation of the club shall be in strict conformity with the plans and testimony submitted to the Board.

Date: 7/26/12

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Richard E. Freeburn

SJ Cate

~~M~~ary Jane Cate

Gregory P. Sirb

David B. Dowling

David B. Dowling

Jeffrey W. Staub